

MINUTES
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING
Utah Department of Environmental Quality
168 North 1950 West, Building #2, (Conf. Room 101), SLC, Utah

March 9, 2006

Board Members Present: Craig Anderson, (Chair), John Newman (Vice-Chair), Michael Brehm, Carlton Christensen, Kory Coleman, Craig Forster, Gary Mossor, Kevin Murray, Dianne Nielson, Dennis Riding.

Staff Members Present: Dennis Downs, Brad Johnson, Scott Anderson, Ralph Bohn, Jeff Emmons, Martin Gray, Wade Hansen, Rusty Lundberg, Allan Moore, Cheryl Prawl, Don Verbica, Raymond Wixom.

Others Present: Dana Campbell, Elizabeth Lowes, Kris Snow, Bryan Slade, Chris Lilley, Nathan Rich, Dan Shrum, Clint Warby.

I. The meeting was called to order at 1:07 p.m.

Scott Bruce, David Cunningham, and William Doucette were excused from the meeting.

Gary Mossor informed the Board of a recent change in his employment. Mr. Mossor stated that when he was initially appointed to the Board, representing the hazardous waste industry, his employment was with Clean Harbors Environmental Services. However, his employment has recently changed as he is now employed with MHF Logistics. MHF Logistics is a company that handles brokering of waste across the nation. Mr. Mossor will be handling all of their new business from Mississippi to the Pacific Ocean. Mr. Mossor stated that with his new position he will still be in the industry and believes he can remain a viable member of the Board that can continue to represent the hazardous waste industry.

II. Approval of minutes for the February 9, 2006, Board meeting (Board Action Item)

It was motioned by John Newman and seconded by Gary Mossor and unanimously carried that the February 9, 2006, Board meeting minutes be approved.

III. Underground Storage Tanks Update

Brad Johnson informed the Board members that House Bill 271 (HB271), which will require owners/operators of Underground Storage Tanks (USTs) to put all or none of their tanks on the Petroleum Storage Tank (PST) Fund, passed during the recent Legislative Session. This bill was discussed extensively with the Utah UST Advisory Task Force (UST Task Force). The Division of Environmental Response and Remediation (DERR) is developing standards that tanks must meet to get back on the PST Fund. The DERR will work with the UST Task Force and keep the Board updated on this process. The effective date of this legislation is January 1, 2007. Owners/operators will have until then to make a business decision whether to have all or none of their tanks on the PST Fund.

Craig Anderson inquired if the DERR anticipated any need for exemptions or rule changes that would need to be made concerning HB271. Mr. Johnson stated that the DERR feels that with the existing statutes and rules, they would be adequately covered and would not require any exemptions or rule changes.

Mr. Johnson then explained to the Board members that the cleanup rules that were discussed in previous Board meetings are now out for public comment. The formal public comment period began on March 1, 2006, and will end March 30, 2006. A public hearing to discuss these cleanup rules has been scheduled for March 28, 2006. It is anticipated that the cleanup rules will come before the Board in either April or May for final adoption.

IV. Used Oil Section

Proposed Stipulation and Consent Order between the Board and Tri-State Recycling Services (Board Action Item)

Cheryl Prawl reviewed the Proposed Stipulation and Consent Order (SCO) No. 0506017 between the Board and Tri-State Recycling Services. A used oil audit (inspection) was conducted at the Tri-State facility. Based on various compliance issues identified from that inspection, a Notice of Violation (NOV) was issued on March 10, 2005. The NOV was issued based on three findings: Tri-State stored used oil in Utah in excess of 24 hours (for a total of four days) without a used oil transfer facility or processor permit; Tri-State delivered used oil as on-specification without properly testing the entire volume delivered on eight occasions; and Tri-State improperly tested or documented total halogen concentrations prior to collecting used oil in Utah over a four day period.

To resolve the NOV, a proposed SCO has been negotiated with Tri-State. Under the terms of the proposed SCO, Tri-State will pay \$16,880.

The public comment period began on January 30, 2006 and ended on February 28, 2006. No comments were received. The Division recommends that the Board approve the proposed SCO.

It was motioned by Carlton Christensen and seconded by Gary Mossor and unanimously carried to approve the Proposed Stipulation and Consent Order (SCO) No. 0506017 between the Board and Tri-State Recycling Services, Inc.

V. Solid Waste Section

A. Proposed Stipulation and Consent Order between the Board and A-Live Foods (Informational Item Only)

Ralph Bohn informed the Board of the proposed Stipulation and Consent Order between the Board and A-Live Foods. This Stipulation and Consent Order is to resolve the Notice of Violation No. 0510028 issued to A-Live Foods, Inc. on June 6, 2005. A-Live Foods, Inc. is a natural food processor in Cedar City, Utah.

On March 30, 2005, a site visit was conducted at the A-Live Foods, Inc. facility. During the site visit, a waste tire incinerator was observed incinerating waste tires on site. Specifically, waste tires were fed into the incinerator and the heat produced by burning the waste tires was captured in a heat exchange unit. The heat was then used in A-Live Foods' manufacturing process. A-Live Foods Inc. has violated provisions of the Utah Administrative Code and Utah Code Annotated by failing to obtain a permit to operate a non-hazardous solid waste incinerator. The incinerator has been shut down and dismantled.

To resolve the NOV, a proposed SCO has been negotiated with A-Live Foods. Under the terms of the proposed SCO, A-Live Foods will pay \$3,300.

A 30-day public comment period on the proposed SCO began on March 3, 2006 and will end on April 6, 2006. Following the public comment period, the matter will be presented to the Board in a subsequent meeting.

Carlton Christensen asked if incineration of tires is a frequent use for energy or if this was a rare case. Mr. Bohn stated that this particular case is a rare case. However, the incineration of tires for heat is one of the big uses for used tires in the state.

Ralph Bohn clarified that a meeting was held with A-Live Foods Inc. in July 2004 to discuss the regulatory issues regarding the recycling of waste tires by incineration. Discussions during that meeting included the process and the permits that were required by the various divisions with the DEQ to operate an incinerator. However, in 2005, during a site visit, a waste tire incinerator was observed incinerating tires on site. The owners violated a rule that they had previously been informed of and that they knew they must comply with.

Michael Brehm questioned if the following two items needed to be corrected. After review, it was agreed that the following two corrections will be made on the “Narrative Explanation to Support Penalty Amount for Proposed Stipulation and Consent Order” under 1 (b) Extent to Deviation: The owners of this site ~~have~~ had been warned that the operation of a Solid Waste Incinerator requires State permitting. The Utah Department of Environmental Quality formally notified the owners on February 25, ~~2005~~ 2004.

Carlton Christensen stated the facility willfully ignored the process to obtain a permit and asked if the penalty assessment of \$3,300 is sufficient to persuade a company in the future not to have these types of violations. Mr. Bohn stated that the Division’s penalty matrix was utilized to determine the penalty amount. Mr. Bohn also stated that A-Live Foods Inc. informed him that they were merely performing a test of the equipment only, not operating an incinerator. Board members asked how long were the tests being conducted. Mr. Bohn stated that he was not aware of the actual timeframe involved, but believed the incineration occurred for a few weeks.

B. Proposed Stipulation and Consent Order between the Board and Wasatch Integrated Waste Management District (Board Action Item)

Ralph Bohn reviewed the proposed Stipulation and Consent Order (SCO) between the Board and Wasatch Integrated Waste Management District (WIWMD). The SCO is to resolve Notice of Violation (NOV) No. 0509023 issued to WIWMD on October 5, 2005. On August 2, 2005, WIWMD received a truckload of color computer monitors for disposal by incineration from the Utah Division of Fleet and Surplus Services (State Surplus). The monitors were incinerated between August 4-7, 2005. Color monitors are considered a hazardous waste due to the lead content of the cathode ray tube. WIWMD is a solid waste incinerator permitted to accept all non-hazardous solid waste and household hazardous waste only. Violations cited in the NOV included: disposal of hazardous waste without a permit; disposal of prohibited hazardous waste; and failure to implement the facility plan to prevent disposal of hazardous waste.

To resolve the NOV, a proposed SCO has been negotiated with WIWMD. Under the terms of the proposed SCO, WIWMD will pay \$5,004.

The public comment period began on February 4, 2006 and ended on March 6, 2006. No comments were received. The Division recommends that the Board approve the proposed SCO.

Michael Brehm stated that the WIWMD SCO stipulated to a project and a plan preparation and asked if that information had been submitted. Mr. Bohn stated that all items that WIWMD stipulated to were submitted before the SCO was finalized. Jeff Emmons further stated that WIWMD was ordered to conduct a review of its waste screening procedures and employee training programs. The review was required to identify the failures of the plan of operation to prohibit the disposal of the CRTs. Following that review, the plan of operation was appropriately revised and employees trained to prevent similar failures. Also, WIWMD has submitted the findings from the waste screening procedure review and the resulting changes to the plan of operation to the Executive Secretary.

It was motioned by John Newman and seconded by Craig Forster and unanimously carried to approve the Proposed Stipulation and Consent Order (SCO) No. 0512042 between the Board and Wasatch Integrated Waste Management District (WIWMD).

VI. HW Management Section

Allan Moore informed the Board of the proposed Stipulation and Consent Order (SCO) between the Board and the Division of Fleet and Surplus Services (DFSS). This SCO is to resolve the Notice of Violation (NOV) No. 0509024 issued to the DFSS on October 5, 2005.

On August 2, 2005, DFSS shipped a truckload of color monitors to the Wasatch Integrated Waste Management District (WIWMD) facility for incineration. Color monitors are considered a hazardous waste due to the lead content of the CRT. WIWMD is a solid waste incinerator only permitted to accept household hazardous waste and non-hazardous solid waste. Violations cited in the NOV included: R315-5-1.12(a): Failure to obtain EPA ID

No., R315-5-1.12(c): Shipment of hazardous waste to an unapproved facility, R315-5-2.20(a): Failure to use manifest for shipment of waste, R315-5-3: Improper packaging, labeling, marking, and placarding, R315-13-1: Failure to comply with Land Disposal Restriction requirements.

To resolve the NOV, a proposed SCO has been negotiated with the DFSS. Under the terms of the proposed SCO, DFSS will pay \$4,732. The penalty will be paid as follows: A cash payment of \$2,366.00 will be made within forty-five days of entry into the SCO and the other half of the penalty amount \$2,366.00 will be credited towards the penalty in the form of a Supplemental Environmental Project (SEP). Some of the discussions for this SEP include training and providing assistance to other State Agencies, School Districts, and other agencies that DFSS works with to assist them in promoting the safe disposal of these types of monitors in the future.

No Board action is required at this time. This is an informational item only. A public comment period on the proposed SCO began on March 6, 2006 and will end on April 6, 2006. Following the public comment period, the matter will be presented to the Board in a subsequent meeting.

John Newman requested clarification on how a State agency is able to pay a penalty issued by another State agency. Dennis Downs stated that it is the responsibility of the violator to determine where they can get the appropriate funding to pay the penalty amount. Mr. Downs stated that in this instance, a SEP is part of the settlement which allows an agency to propose some kind of an activity that is of a benefit to the environment and related to the violation and the resources expended to go forward with that project off-set a portion of the penalty amount. One SEP option would be to provide training to other state agencies that have surplus computers and electronic equipment on the proper handling and proper disposal methods.

Carlton Christensen stated that he commended the use of a SEP in this case. He said he agrees that an educational SEP may assist other entities from making the same mistake. Mr. Christensen also asked if the Division has incurred costs and questioned if the entire penalty could all go toward the SEP. Mr. Downs stated that the Division's agreement with the EPA prohibits the total mitigation of a penalty by a SEP.

IX. Commercial/Federal Facilities
Clean Harbors, Grassy Mountain Facility, request for a site-specific treatment variance
(Board Action Item)

Don Verbica reviewed the Clean Harbors, Grassy Mountain Facility, site-specific treatment variance request. The Grassy Mountain Facility proposes to receive, treat and dispose of a waste stream that has both RCRA and TSCA (PCB) codes. Waste streams that have only RCRA codes have a PCB standard of 10 ppm for non-wastewater waste streams as established in the 40 CFR. Waste streams with only TSCA codes have no numerical standard for PCBs. As a result, there exists a disparity in PCB concentrations in waste streams subject to both the RCRA and TSCA programs that are destined for disposal. For these waste streams, such as the one addressed in the variance request, the RCRA standard of 10 ppm cannot be met due to the ineffectiveness of PCB stabilization. It should be noted that wastes already placed in Cell B\6 have PCB concentrations in excess of 10,000 ppm. A permit modification request was approved to allow the disposal of RCRA waste, TSCA waste, and waste streams that are regulated by both programs in landfill Cell B\6. This site specific treatment variance is necessary in order for the Grassy Mountain Facility to treat and dispose of this waste stream in excess of the 10 ppm standard. This treatment variance will be in effect for a period of one year if approved by the Board.

The comment period on the variance request began on January 31, 2006, and ended on March 1, 2006. No comments were received.

Craig Anderson asked if the proposal is sufficiently protective of the environment to be a reasonable alternative. Mr. Verbica stated that Grassy Mountain Facility's request for a site-specific treatment variance request is sufficiently protective of the environment and the Division recommends that this site-specific treatment variance be approved.

It was motioned by Carlton Christensen and seconded by Gary Mossor and unanimously carried that Clean Harbors, Grassy Mountain Facility, request dated January 13, 2006, for a site-specific treatment variance be approved.

**X. Chemical Demilitarization
TOCDF**

Marty Gray stated that previously the Board had voted to resolve a Notice of Violation (NOV) with Deseret Chemical Depot (DCD) through a Judicial Consent Decree. That Judicial Consent Decree was signed by a Judge in January and part of the stipulation was for DCD to come into compliance with the Order. The facility has complied with the Order and at this point all issues have been resolved.

TOCDF is currently conducting a Secondary Waste Trial Burn on DPE suits and carbon canisters from the gas masks. The DPE suits are virgin material and the carbon canisters have been slightly used in uncontaminated areas. This trial burn will be used to establish permit conditions and incinerator operating conditions to burn secondary waste in the future. Once this trial burn is complete, TOCDF will shut-down and prepare for the mustard campaign.

The Division staff are currently in the process of reviewing a permit modification for the mustard processing. This permit modification deals with how the mustard processing will occur, sampling issues, etc. The permit modification deals only with the base-line process ton containers. These are the mustard containers that do not contain high levels of mercury. Mercury is less than 1 ppm. Once the Division staff has reviewed the permit modification, it will go out for a 45-day public comment period. The Division staff has asked TOCDF to give the Board a briefing at the next Board meeting regarding the mustard processing and what will be implemented for the mustard contaminated with high levels of mercury.

The Executive Secretary has signed a Notice of Violation (NOV) issued to Deseret Chemical Depot. The NOV included 56 violations that have accumulated over a one-year period of time. Many of the violations were self-reported, and some were identified through Division staff inspections. Approximately twenty-two of the violations were related to TOCDF and the rest were related to CAMDS and DCD operations.

XI. Other Business

A. Election of Board Chairman and Vice-Chairman (Board Action Item)

The Board's governing statute requires the election of the Board Chair and Vice Chair annually. The statute requires that the elected Chairman and Vice-Chairman be in place prior to April 1st of each year.

Mr. Anderson asked the Board if they preferred to vote by voice nomination or by written ballot. (Board members preference was for open voice nomination.) Discussion for Craig Anderson to remain as Board Chairperson was initiated by Gary Mossor.

It was motioned by John Newman and seconded by Michael Brehm and unanimously approved that Craig Anderson continue to serve as the Chairperson for the Utah Solid and Hazardous Waste Control Board for the upcoming year.

It was motioned by Carlton Christensen and seconded by Gary Mossor and unanimously approved that John Newman continue to serve as the Vice Chairperson for the Utah Solid and Hazardous Waste Control Board for the upcoming year.

B. Legislative Update

Dennis Downs provided the information on the legislative bills that impact the Division of Solid and Hazardous Waste programs.

H.B. 43 - Sunset Review and Reauthorizations, sponsored by Representative J. Alexander.

This bill reauthorized certain named state entities and programs that were scheduled to sunset. The Lead Acid Battery Disposal Act was included in this bill. The Lead Acid Battery Disposal Act was scheduled to sunset next July unless it was reauthorized by the Legislature. This bill did pass and the Lead Acid Battery Disposal Act will be renewed for ten years.

H.B. 138 - Mercury Switch Removal Act, sponsored by Representative Ronda Rudd Menlove.

There are convenience switches in automobiles (mainly in trunk/hood lights) that automatically go on. The switch that performs this task is a mercury activated switch. Because of the problems associated with mercury throughout the country, many states are taking action to get these mercury switches out of the waste stream, and into recycling programs. The United States and the European automobile industries are no longer using mercury in these switches. The legislature's objective in this bill was to take the mercury switch out of a vehicle before the vehicle is shredded, and send the mercury to a recycler. This process should be less expensive and a more reasonable way to get a pollutant out of the system as opposed to leaving it in the car allowing the mercury to be crushed and then sending it through the steel mill and capturing it in smoke stacks and then still having to recycle it.

This bill defined terms and requires manufacturers of vehicles sold in the State to submit a plan for the removal and collection of those mercury switches, pay for the costs of removing and collecting the mercury switches and submit an annual report to the Utah Solid and Hazardous Waste Control Board. The bill specifies plan contents and authorizes the Board to make rules and enforce them, and authorizes the Executive Secretary for the Board to establish a fee for the review and approval of the plan, and initiate administrative action to compel compliance with the part.

Some opposition to this bill did exist from the automobile manufactures because it does include a \$5 "bounty" per switch that the manufactures have to pay to the automobile dismantlers to help cover costs for the removal of the switches.

This bill has passed and will require the Division to prepare some rulemaking that will detail what needs to be incorporated in the plans that the automobile manufactures are required to submit. The rulemaking language and rulemaking process will be presented to the Board in the near future. It is anticipated that the Automobile Manufacturers will only submit one plan for all of them. Also, the Division has recently been notified that a group has been working with the EPA to put in place a national plan that would be consistent in all states.

S.B. 209 - Waste Fee Amendments, sponsored by Senator Dan R. Eastman.

This bill modified non-hazardous solid waste disposal fees and reduced the amount of waste disposal fees that are deposited into the General Fund. This bill did not impact the hazardous waste fee totals and did not impact the municipal/government owned solid waste disposal facilities. This bill did impact the commercial non-hazardous solid waste disposal facilities and adjusts the fees that are paid to the State. This bill was not initiated by DEQ. It was initiated by the commercial disposal facilities that felt they were paying too much in disposal fees. The DEQ's position was that as long as the State does not lose money, fee adjustments are acceptable. The purpose of the bill was to equalize the playing field between municipal facilities and commercial facilities as they competed for the various waste streams. This bill did pass.

S.B. 215 - Electronic Waste Task Force and Moratorium on Electronic Waste Disposal, sponsored by Senator Scott D. McCoy.

This bill prohibited the disposal of electronic waste and would have created the Electronic Waste Task Force. The bill stated that after July 1, 2007, a person may not place, discard, or otherwise dispose of electronic waste in any non-hazardous solid waste landfill or incinerator operated by a commercial entity or a political subdivision of the State. The July 1, 2007, date was deleted from the bill. However, this bill did not pass, but instead will be placed on the Interim Study list. It is anticipated that this bill will be considered during the next legislative session.

Dennis Downs stated that a conference regarding electronic waste will be held on May 18, 2006. This conference is being sponsored by the Recycling Coalition of Utah. The objective is to hold a statewide conference and address issues on electronic waste. Board members will receive an invitation to attend this conference.

**S.B. 70 - Process For Approval Of Waste Disposal Amendments,
sponsored by Senator Howard A. Stephenson**

This bill modifies legislative and gubernatorial approval requirements for the disposal of certain wastes. This bill modifies the legislative and gubernatorial approval requirements for the disposal of certain commercial radioactive wastes, hazardous wastes, and non-hazardous solid wastes; requires that legislative approval be provided by statute; provides that gubernatorial approval is given if the statute giving legislative approval is not vetoed; and provides that gubernatorial approval is not required if the governor vetoes the statute giving legislative approval and the veto is overridden. This bill did not pass.

H.B. 100 - Environmental Litigation Bond, Sponsored By Representative Aaron Tilton

This bill requires entities that do business in the state to file a bond with the Division of Corporations and Commercial Code when they initiate environmental litigation. This bill also defines terms; authorizes the division to establish a fee for the bond filing; hold a hearing to establish the bond amount; make rules for posting the bond; revoke a certificate of existence for failure to post a bond; and requires the division to revoke a certificate of existence if another state with a similar law has revoked an entity's certificate of existence.

The Environmental Protection Agency has sent a letter to the Governor stating some concerns with this bill as it may jeopardize the status of the environmental programs in Utah in terms of authorization to run various programs. The bill would also be perceived to be less stringent than federal law and it would limit the public participation process. This bill did pass, but was vetoed by the Governor.

C. Potential Field Trips

Dennis Downs reviewed various locations within the State as potential field trips for the Board. In the past, the Board would visit the facility in the morning and then conduct the Board meeting in the afternoon. The following field trip sites were briefly discussed to determine the Board's interest in touring them: EnergySolutions Facility (formally Envirocare) and the two Clean Harbors Facilities (Aragonite and Grassy Mountain Landfill), Davis County Solid Waste Management Site (June time-frame), ECDC, Utah Tire Recyclers (Tire Shredder Site) (May time-frame), and Geneva Steel (September/Fall Season time-frame).

Mr. Downs stated that if the Board has other potential field trip sites to contact him to coordinate site visits. Mr. Downs will coordinate tours of the sites that the Board members are interested in touring.

D. The next Board meeting will be held on (Thursday) April 13, 2006 at 1:00 p.m., in the DEQ Building #2, Conference Room 101.